

General Information Letter: Petition to use separate accounting method cannot be granted absent a showing that the statutory apportionment method fails to fairly represent the business activities of the taxpayer in Illinois and that the separate accounting method does fairly represent business activities in Illinois.

February 17, 2000

Dear :

This is in response to your letter dated January 31, 2000, in which you request permission to use separate accounting rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 et seq.). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

xx respectfully requests to use the direct or separate accounting method for the Illinois Partnership Replacement Tax Return (Form IL-1065) for the taxable year ended December 31, 1999 (and all subsequent tax years, if applicable). The partnership's federal employer identification number is xxxxxxxxxx. The partnership will also be filing a Illinois Composite Income and Replacement Tax Return (Form IL-1023-C) on behalf of all eligible nonresident individual partners who elect to be included. The partners are residents of several different states, but the majority are residents of Texas.

The partnership's business activities consist of acquiring or developing nonresidential rental real estate, then operating, financing, leasing, and disposing of such real estate. Although the properties are located in many different states, separate accounting records are maintained for each and every rental real estate property. Therefore, we believe the direct or separate accounting method more clearly reflects the taxable income to be reported in Illinois than the apportionment of net rental income and gains on sales of properties.

Response

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;

(3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, a copy of which is enclosed.

Your request fails to meet the most important substantive provision of that regulation, because it fails to make any showing that the statutory apportionment method does not "fairly represent the extent of the person's business activity in this State." 86 Ill. Adm. Code Section 100.3390(c) describes the burden of proof for making this showing.

Your request contains no facts that would support a conclusion that separate accounting is appropriate. For example, you do not address the issues of how administrative, property management and financing expenses are allocated among the various properties under separate accounting or explain why such allocation better reflects the extent of the taxpayer's business activity in Illinois than does the statutory apportionment method. Accordingly, your petition cannot be granted at this time.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed January 25, 2000, will allow a taxpayer to use the requested method on original returns due on or after May 24, 2000, if granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390.

Sincerely,

Paul S. Caselton
Deputy Chief Counsel -- Income Tax